IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE R.BASANT

TUESDAY, THE 29TH MAY 2007 / 8TH JYAISHTA 1929

Crl.MC.No. 1296 of 2007()

ST.5803/2005 of JUDL. MAGISTRATE OF FIRST CLASS COURT-I, THRISSUR

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PETITIONER/ACCUSED:

IDICULLA VARGHESE,
MANNATHUZHETHIL HOUSE,ERAVIPEROOR,
PATHANAMTHITTA.

BY ADV. SRI.B.S.SWATHY KUMAR

RESPONDENTS/STATE & CW1:

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1. SHIBU P.MATHEW,THATTIL HOUSE,
THADAPPARAMBU P.O.,MULAMKUNNATHKAVU,
THRISSUR.

2. STATE OF KERALA REPRESENTED BY
PUBLIC PROSECUTOR, HIGH COURT OF KERALA,
ERNAKULAM.

BY PUBLIC PROSECUTOR SRI.C.K.SURESH

THIS CRIMINAL MISC. CASE HAVING COME UP FOR ADMISSION ON 29/05/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

R.BASANT, J.

Crl.M.C.No. 1296 of 2007

Dated this the 29th day of May 2007

O R D E R

The petitioner faces indictment in a prosecution under Section 138 of the Negotiable Instruments Act. He has not entered appearance before the learned Magistrate. It is submitted that he is permanently residing at Saudi Arabia and is working there. A warrant of arrest issued by the learned Magistrate is chasing him. The petitioner, in these circumstances, has come to this court with a prayer that the proceedings against him may be quashed.

2. What are the reasons? Two reasons are urged by the learned counsel for the petitioner. That the cheque is drawn on a cheque leaf issued to the petitioner by his bank is not disputed. There is no specific contention raised that the signature in the cheque is not that of the petitioner. The petitioner contends that the prosecution is liable to be quashed for two reasons. Firstly, it is contended that the cheque was not issued but was thieved from the possession of the petitioner by the complainant when

both of them were working at Saudi Arabia. That is a contention on which this court cannot hazard an opinion on the basis of the materials presently available and at this stage. That contention will have to be established in the course of the trial.

3. Secondly and alternatively a contention is raised that though the notice is shown addressed to the petitioner's address at Saudi Arabia, the acknowledgment produced will show that it was issued to the Indian residential address of the accused. The petitioner does not admit that that is his residential address. He submits that it is the address of his father's family residence where his father occasionally goes. Be that as it may, that letter is seen received by someone. It is for the petitioner to raise his contention in the course of the trial that the notice of demand had not been served on the petitioner and that it was not correctly addressed to him. That contention again is one which will have to be raised in the course of the trial and substantiated. At this point of time, it may not be possible for this court to grant any relief on the basis of the assertion that the said address is not that of the petitioner.

4. This Criminal Miscellaneous Case does, in these circumstances, fails. The same is dismissed with the observation that the petitioner shall be at liberty to raise all necessary and relevant contentions before the learned Magistrate in the course of the trial.

5. Finally, the learned counsel for the petitioner submits that the petitioner wants to appear before the learned Magistrate and seek bail. But he apprehends that his application for bail may not be considered by the learned Magistrate on merits, expeditiously and in accordance with law. He, therefore, prays that the directions under Section 482 Cr.P.C. may be issued to the learned Magistrate to release the petitioner on bail when he appears and applies for bail.

6. It is for the petitioner to appear before the learned Magistrate and explain to the learned Magistrate, the circumstances under which he could not earlier appear before the learned Magistrate. I find absolutely no reason to assume that the learned Magistrate would not consider the application for bail to be filed by the petitioner on merits, in accordance with law and expeditiously. Every court must do the same. No special

or specific directions appear to be necessary. Sufficient general directions have been issued in Alice George vs.Deputy Superintendent of Police [2003(1)KLT 339].

7. In the result, this Criminal Miscellaneous Case is dismissed but with the specific observation that if the petitioner surrenders before the learned Magistrate and applies for bail, after giving sufficient prior notice to the Prosecutor in charge of the case, the learned Magistrate must proceed to pass appropriate orders on merits, in accordance with law and expeditiously - on the date of surrender itself.

Hand over copy of this order to the learned counsel for the petitioner.

(R.BASANT, JUDGE)

jsr

R.BASANT, J.

CRL.M.CNo.

ORDER

21ST DAY OF MAY2007